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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	No. 45199
Plaintiff-Appellant,)	
)	Ada County Case No.
v.)	CR-FE-2014-17766
)	
RANDALL JEROME BILLUPS,)	
)	
Defendant-Respondent.)	
_____)	

REPLY BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ADA**

**HONORABLE LYNN G. NORTON
District Judge**

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ARGUMENT

The District Court Erred By Dismissing

A. Introduction

The district court, contrary to established precedent, concluded that the Idaho Court of Appeals, by reversing Billups' conviction but not specifically stating the case was remanded, had required that the case be dismissed rather than retried. (Appellant's brief, pp. 4-7.) On appeal, Billups first argues that I.A.R. 38 requires dismissal when the appellate court does not use the phrase "reversed and remanded" in its opinion. (Respondent's brief, pp. 3-4.) This argument fails because it is directly contrary to precedent and unsupported by the text of Rule 38. Billups next argues that by finding the arrest illegal because of lack of probable cause the Court of Appeals in some way indicated an "inten[t] to release [Billups] from these charges." (Respondent's brief, pp. 5-6.) This argument is contrary to law.

B. The Court Of Appeals' Decision Left The Case In The Same Position As If The District Court Had Granted The Motion To Suppress

Well established precedent shows that by reversing the judgment of conviction and finding error in denying the motion to suppress, the Idaho Court of Appeals left the case in the same position as if the motion to suppress had just been granted and the trial was still pending. State v. Hosey, 134 Idaho 883, 886, 11 P.3d 1101, 1104 (2000) ("The general rule is that, on remand, a trial court has authority to take actions it is specifically directed to take, or those which are subsidiary to the actions directed by the appellate court."); Walters v. Industrial Indem. Co., 130 Idaho 836, 838, 949 P.2d 223, 225 (1997) ("a trial court may take additional action, if the action concerns a matter that is a

subsidiary issue fairly comprised in the disposition of the case”); Hutchins v. State, 100 Idaho 661, 665, 603 P.2d 995, 999 (1979) (reversal leaves the case “standing as it did” prior to the error); Idaho Gold Dredging Corp. v. Boise Payette Lumber Co., 54 Idaho 270, ___, 30 P.2d 1076, 1078 (1934) (“[R]eversal of a judgment upon appeal of itself calls for a new trial, unless the appellate court otherwise disposes of the action”). This precedent shows the district court erred by concluding it did not have the authority to conduct a trial.

Billups has chosen to ignore this precedent. (See, generally, Respondent’s brief.) After quoting some of the language in I.A.R. 38 (upon remittitur lower court “shall forthwith comply with the directive of the opinion”), several cases addressing statutory interpretation¹, and asserting the Court of Appeals “omitted the words ‘reversed and remanded,’” Billups argues that reversing the conviction without further instruction limited the lower court’s actions to reversing the judgment. (Respondent’s brief, pp. 3-4.) This argument of necessity ignores the established precedent to the contrary. By reversing the judgment because the district court erroneously denied suppression the Court of Appeals left the case “standing as it did” prior to entry of the erroneous denial of suppression. Hutchins, 100 Idaho at 665, 603 P.2d at 999. This called for “a new trial, unless the appellate court *otherwise disposes of the action.*” Idaho Gold Dredging Corp., 54 Idaho at ___, 30 P.2d at 1078 (emphasis added). Billups was

¹ The legal standards for statutory interpretation have no obvious relevance here. The standard for interpreting court rules starts “with the plain, ordinary meaning of the rule’s language” but is “tempered by the rule’s purpose” to avoid producing “an absurd result.” State v. Montgomery, ___, Idaho ___, 408 P.3d 38, 42 (2017). Granting a criminal defendant an acquittal because the appellate court did not use magic words is an absurd result.

not entitled to dismissal where the case was standing as it did prior to the erroneous denial of the motion to suppress and the Court of Appeals had not otherwise disposed of the action.

Interpreting Rule 38's mandate that the "district court ... shall forthwith comply with the directive of the opinion" consistent with established precedent that requires the lower court to accept the case in the posture it would have been but for the error avoids "absurd result[s]." Montgomery, ___ Idaho at ___, 408 P.3d at 42. An appellate court cannot consider and weigh in on all issues not raised and that could not possibly be decided on appeal. In this case, for example, after concluding that at least some of the evidence used to convict Billups at trial had been suppressed, it would have been impossible for the Court of Appeals to decide whether the state would elect to proceed to trial. If the state had been left with insufficient evidence to proceed to trial it would have been compelled to dismiss. However, the Court of Appeals was in no place to decide on the adequacy of the evidence remaining after its ruling. Such a determination would necessarily have to be made in the lower court.

The Court of Appeals' holding that the district court erred by denying suppression of evidence resulting from Billups' illegal arrest left the case after remittitur in the same position as if the district court had just granted the motion to suppress. Unless the state had concluded the evidence was insufficient, the next step in the case would be a trial. Well established precedent shows the district court erred by concluding that the Court of Appeals' decision required dismissal of the case.

C. Billups' Argument That The Holding That Police Lacked Probable Cause To Arrest Billups Required Dismissal Of The Case Is Without Merit

Billups also argues that the Court of Appeals' holding that he was arrested without probable cause means the case should be dismissed. (Respondent's brief, pp. 5-6.) It is well established, however, that "illegality of an arrest is no defense in a criminal action." State v. Segovia, 93 Idaho 594, 597, 468 P.2d 660, 663 (1970) (citing Frisbie v. Collins, 342 U.S. 519 (1952); Ker v. Illinois, 119 U.S. 436 (1886); State v. Poynter, 70 Idaho 438, 220 P.2d 386 (1950)). Billups' argument that the determination the arrest was not supported by probable cause in some way requires dismissal in the district court is without merit.

CONCLUSION

The state respectfully requests this Court to reverse the district court's order dismissing the case.

DATED this 5th day of February, 2018.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 5th day of February, 2018, served two true and correct paper copies of the foregoing REPLY BRIEF OF APPELLANT by placing the copies in the United States mail, postage prepaid, addressed to:

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